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10 Attorneys for Defendant  
11 WALMART INC.

12 **UNITED STATES DISTRICT COURT**

13 **DISTRICT OF NEVADA**

14 GINA VENDITTI, individually,

15 Plaintiffs,

16 vs.

17 WALMART INC., a Delaware corporation;  
18 DOE EMPLOYEE; DOES I-V; and ROE  
19 CORPORATIONS I-V, inclusive,

20 Defendants.

21 Case No.: 2:23-cv-00051-JAD-BNW  
22 Hon. Jennifer A. Dorsey

23 **ORDER GRANTING DEFENDANT'S  
24 MOTION TO DISMISS BASED ON  
25 FRCP 25(a)(1)**

26 ECF No. 14

27 COMES NOW Defendant WAL-MART, INC. ("Defendant" or "Walmart") and hereby  
28 moves this Honorable Court for dismissal pursuant to Federal Rule of Civil Procedure ("FRCP")  
25(a)(1). This motion is made and based upon the Memorandum of Points and Authorities, all  
pleadings and papers on file herein, and any oral argument this honorable Court deems necessary.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

## I. INTRODUCTION

Defendants respectfully request this Court dismiss this action with prejudice pursuant to FRCP 25(a)(1) as a Suggestion of Death was filed on June 1, 2023, and no motion for substitution has been filed.

## II. PERTINENT FACTUAL AND PROCEDURAL HISTORY

Plaintiff filed the underlying action on December 6, 2022 [Dkt. 1-1]. Defendants removed this action on January 9, 2023 [Dkt. 1]. Plaintiff filed a Suggestion of Death Upon the Record Under Rule 25(a)(1) [Dkt. 11] on June 1, 2023. Plaintiff's counsel filed a Motion to Withdraw as Counsel of Record for Plaintiff on June 7, 2023 [Dkt. 12]. The Motion to Withdraw was granted on June 23, 2023 [Dkt. 13].

### III. LEGAL ARGUMENT

FRCP 25(a)(1) provides:

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Here, Plaintiff filed a Suggestion of Death Upon the Record Under Rule 25(a)(1) [Docket 11] on June 1, 2023. Accordingly, a motion for substitution must have been made on or before August 30, 2023. Further, on June 22, 2023, Magistrate Judge Brenda Weksler issued a minute order granting Plaintiff's attorney Motion to Withdraw. The order required any party wishing to pursue this action to associate counsel and notify the Court within sixty (60) days of the entry of the order. However, no association was made within sixty (60) days of June 22, 2023. As no motion or association was made, this action must be dismissed.

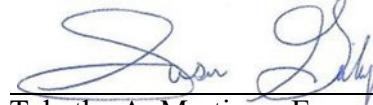
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1           **IV. CONCLUSION**

2           Defendant respectfully request this Court dismiss this action in its entirety with prejudice  
3 pursuant to FRCP 25(a)(1).

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5           **BURGER | MEYER LLP**

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7           Tabetha A. Martinez, Esq.  
8           Susan E. Gillespie, Esq.  
9           Attorneys for Defendants

10           **ORDER**

11           Because defendant has shown that Plaintiff Gina Venditti passed away, the  
12 suggestion of death was filed more than 90 days ago [ECF No. 11], and no  
13 substitute plaintiff has been identified, IT IS ORDERED that Walmart's  
14 unopposed motion to dismiss under FRCP 25(a)(1) [ECF No. 14] is **GRANTED**,  
15 and this action is **DISMISSED**. The Clerk of Court is directed to **CLOSE THIS  
CASE**.

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18           U.S. District Judge Jennifer A. Dorsey  
19           October 2, 2023